

Senate Bill 47

By: Senators Seabaugh of the 28th, Stoner of the 6th, Murphy of the 27th, Schaefer of the 50th and Tate of the 38th

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to
2 elementary and secondary education, so as to provide that school districts may agree to assist
3 employees in investing in certain qualified retirement plans; to define certain terms; to provide
4 that a school district may agree to deposit a portion of an employee's salary into a qualified
5 investment plan; to provide certain requirements for companies eligible to offer such plans;
6 to provide that the Teachers Retirement System of Georgia shall administer such program; to
7 provide for certain offenses and penalties; to provide for notice; to provide for related matters;
8 to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and
12 secondary education, is amended by inserting at the end thereof a new article to read as
13 follows:

14 "ARTICLE 33

15 20-2-2120.

16 As used in this article, the term:

17 (1) 'Board of trustees' means the board of trustees of the Teachers Retirement System of
18 Georgia.

19 (2) 'Eligible qualified investment' means a qualified investment product offered by a
20 company that:

21 (A) Is certified to the board of trustees under Code Section 20-2-2121; or

22 (B) Is eligible to certify to the board of trustees under 20-2-2122.

23 (3) 'Employee' means any employee of a school district.

24 (4) 'Employer' means a local board of education.

1 (5) 'Qualified investment product' means an annuity or investment that:

2 (A) Meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its
3 subsequent amendments;

4 (B) Complies with applicable federal insurance and securities laws and regulations; and

5 (C) Complies with applicable state insurance and securities laws and rules.

6 (6) 'Retirement system' means the Teachers Retirement System of Georgia.

7 (7) 'Salary reduction agreement' means an agreement between an employer and a teacher
8 to reduce the employee's salary for the purpose of making direct contributions to or
9 purchases of a qualified investment product.

10 20-2-2121.

11 (a) An employer may enter into a salary reduction agreement with a teacher only if the
12 qualified investment product is an eligible qualified investment.

13 (b) A company may certify to the retirement system that the company offers a qualified
14 investment product that is an annuity contract under this section if the company:

15 (1) Is authorized to issue annuity contracts in this state at the time the application is filed;

16 (2) Does not assess fees, costs, or penalties on an annuity contract that exceed the
17 maximum amounts established by rules adopted by the retirement system; and

18 (3) Complies with the standards adopted under Code Section 20-2-2122.

19 (c) A company that certifies under this Code section shall notify the retirement system if,
20 at any time, the company is not in compliance with subsection (b) of this Code section or if
21 an investment product that the company offers under this article is the subject of a salary
22 reduction agreement and the investment product is not a qualified investment product.

23 (d) The retirement system shall establish and maintain a list of companies that have certified
24 under this section. The list must be available on the retirement system's Internet website.

25 (e) An employee is entitled to designate any agent, broker, or company through which a
26 qualified investment product may be purchased or contributions may be made.

27 (f) To the greatest degree possible, employers of employees who participate in the program
28 offered under this section shall require that contributions to eligible qualified investments
29 be made by automatic payroll deduction and deposited directly in the investment accounts.

30 20-2-2122.

31 (a) A company is eligible to certify to the retirement system under Code Section 20-2-2121
32 if the company satisfies the following financial strength criteria:

33 (1) The company's actuarial opinion required under Code Section 33-10-13 has not been
34 adverse or qualified in the five years preceding the date the application is filed;

(2) The company is subject to the annual audit requirements of Title 33, and its most recent audit of financial strength conducted by an independent certified public accountant is timely filed and does not indicate the existence of any material adverse financial conditions in the company for the five years preceding the filing deadline for the audit;

(3) The company has not been the subject of an administrative or regulatory action by the insurance department of the commissioner of securities in the five years preceding the date the application is filed;

(4) The company has maintained during the five years preceding the date the application is filed an average of at least 400 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus requirements established pursuant to Chapter 56 of Title 33; provided, however, that the company must calculate the five-year average on the same date each year;

(5) The company has not fallen below 300 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus established pursuant to Chapter 56 of Title 33, at any time in the five years preceding the date the application is filed; and

(6) The company has at least five years' experience in qualified investment products and has a specialized department dedicated to the service of qualified investment products.

(b) The board of trustees shall promulgate rules and regulations necessary to implement the provisions of this article.

(c) The retirement system shall refer all complaints about qualified investment products to the appropriate division of the insurance department and the commissioner of securities.

(e) The insurance department and the commissioner of securities shall cooperate with the retirement system in the administration of this article and shall notify the retirement system of any action or determination regarding a product or a company that violates the provisions of this article.

(f) The retirement system shall reject or revoke the certification of a company if the retirement system receives notice under subsection (e) of this Code section or subsection (c) of Code Section 20-2-2124 of a violation regarding the company or the company's product. The company may recertify to the board of trustees.

(g) The board of trustees shall prescribe the uniform notice required by Code Section 20-2-2126.

(h) A certification or recertification remains in effect for five years unless rejected or revoked.

(i) A company offering eligible qualified investments that are subject to salary reduction agreements must provide toll-free telephone transferring privileges each business day from 8 a.m. to 6 p.m. eastern standard time.

1 20-2-2123.

2 (a) The retirement system may collect a fee, not to exceed the administrative cost to the
3 retirement system, from a company that certifies or recertifies under Code Section
4 20-2-2121 or 20-2-2122. The fee for certification or recertification may not exceed
5 \$5,000.00.

6 (b) Fees collected under this section shall be deposited to the credit of the 403(b)
7 administrative trust fund. The 403(b) administrative trust fund is created as a trust fund with
8 the comptroller and shall be administered by the retirement system as a trustee on behalf of
9 the participants in qualified investment products offered under this article.

10 20-2-2124.

11 (a) A company that offers qualified investment products other than annuity contracts may
12 certify to the board of trustees based on rules adopted by the board of trustees. The rules
13 shall be based on reasonable factors, including, without limitation, the following:

14 (1) The financial strength of the companies offering products; and

15 (2) The administrative cost to employees.

16 (b) The retirement system shall establish and maintain a list of companies that provide
17 certification under this section. The list must be available on the retirement system's Internet
18 website.

19 20-2-2125.

20 An employer may not:

21 (1) Refuse to enter into a salary reduction agreement with an employee if the qualified
22 investment product that is the subject of the salary reduction is an eligible qualified
23 investment;

24 (2) Require or coerce an employee's attendance at any meeting at which qualified
25 investment products are marketed;

26 (3) Limit the ability of an employee to initiate, change, or terminate a qualified investment
27 product at any time the employee chooses;

28 (4) Grant exclusive access to an employee by discriminating against or imposing barriers
29 to any agent, broker, or company that provides qualified investment products under this
30 article;

31 (5) Grant exclusive access to information about an employee's financial information,
32 including information about an employee's qualified investment products, to a company or
33 agent offering qualified investment products unless the employee consents in writing to the
34 access;

(6) Accept any benefit from a company or from an agent or affiliate of a company that offers qualified investment products; or

(7) Use public funds to recommend a qualified investment product offered by a company or an agent of a company that offers a qualified investment product.

20-2-2126.

(a) A person commits an offense if the person:

(1) Sells or offers for sale a qualified investment product that is not an eligible qualified investment and that the person knows will be the subject of a salary reduction agreement;

(2) Violates any licensing requirements with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement; or

(3) Engages in activity proscribed by Title 33 with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement.

(b) An offense under this Code section is a misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes a criminal offense under Title 33, the actor may be prosecuted under this section or under Title 33.

20-2-2127.

(a) A person who offers to sell an annuity contract that is or will likely be the subject of a salary reduction agreement shall provide notice to a potential purchaser as provided by this section.

(b) The retirement system shall make the notice available on request and post the form of the notice on the retirement system's Internet website.

(c) The notice required under this section must be uniform and:

(1) Be in at least 14-point type;

(2) Contain spaces for:

(A) The name, address, and telephone number of the agent and company offering the annuity contract for sale;

(B) The name, address, and telephone number of the company underwriting the annuity;

(C) The license number of the person offering to sell the product;

(D) The name of the state agency that issued the person's license;

(E) The name of the company account representative who has the authority to respond to inquiries or complaints; and

(F) With respect to fixed annuity products:

(i) The current interest rate or the formula used to calculate the current rate of interest;

(ii) The guaranteed rate of interest and the percentage of the premium to which the interest rate applies;

- (iii) How interest is compounded;
- (iv) The amount of any up-front, surrender, withdrawal, deferred sales, and market value adjustment charges or any other contract restriction that exceeds 10 years;
- (v) The time, if any, the annuity is required to be in force before the purchaser is entitled to the full bonus accumulation value;
- (vi) The manner in which the amount of the guaranteed benefit under the annuity is computed;
- (vii) Whether loans are guaranteed to be available under the annuity;
- (viii) What restrictions, if any, apply to the availability of money attributable to the value of the annuity once the purchaser is retired or separated from the employment of the employer;
- (ix) The amount of any other fees, costs, or penalties;
- (x) Whether the annuity guarantees the participant the right to surrender a percentage of the surrender value each year, and the percentage, if any; and
- (xi) Whether the annuity guarantees the interest rate associated with any settlement option; and

(3) State, in plain language:

- (A) That the company offering the annuity must comply with Code Section 20-2-2121;
- (B) That the potential purchaser may contact the retirement system or access its Internet website to determine which companies are in compliance with Code Section 20-2-2121;
- (C) The civil remedies available to the employee;
- (D) That the employee may purchase any eligible qualified investment through a salary reduction agreement;
- (E) The name and telephone number of the office of the insurance department that specializes in consumer protection; and
- (F) The name and telephone number of the attorney general's division that specializes in consumer protection.

(d) A variable annuity must be accompanied by:

- (1) A notice that includes any item listed in subsection (c) of this Code section that is applicable to variable annuities;
- (2) The prospectus; and
- (3) Any other purchasing information required by law.

(e) An equity-based index contract must state in plain language how the annuity contract will be credited with growth.

(f) If a notice and other information required under this section is not provided, any annuity contract for which the notice is required is voidable at the discretion of the purchaser. Not

1 later than the thirtieth day after the date an employee notifies the seller in writing of the
2 employee's election to void the contract, the seller shall refund to the employee:

3 (1) The amount of all consideration paid to the purchaser; and

4 (2) Ten percent interest up to the date the employee provides the notice to the seller.

5 (g) A seller who receives a refund request under this section is not required to make a refund
6 otherwise required by this section if, not later than the thirtieth day after the date the seller
7 receives a request for a refund from the employee, the seller provides a copy of the notice
8 signed by the employee.

9 20-2-2128.

10 A company that offers an eligible qualified investment that is subject to a salary reduction
11 agreement shall demonstrate annually to the retirement system that each of its representatives
12 are properly licensed and qualified, by training and continuing education, to sell and service
13 the company's eligible qualified investments."

14 **SECTION 2.**

15 All laws and parts of laws in conflict with this Act are repealed.